THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 1787 of 2006

Date of Decision: 7 - 9 - 2006

Union of India and others **.....Appellant**

v.

Mukhtiar Singh **.....Respondent**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mrs.Daya Chaudhary, Asstt.Solicitor General General of India for the appellants.

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P.S.PATWALIA, J. (Oral)

The present regular second appeal has been filed against the judgment of the lower Appellate Court vide which the suit filed by the plaintiff seeking disability pension was decreed and it was held that the plaintiff would be entitled to disability pension. A reading of the judgments of the Courts below would show that at the time when the plaintiff was recruited in the Army his medical category was `A' fit medically in all respects. It was thereafter that he was discharged from service on 24.3.1971 as he had suffered a disability of 20% . The disability assessed was “Anxiety”. Disability pension was denied on account of the fact that the disease was a constitutional disease. On merits, the lower Appellate Court has found as hereunder:-

> “The answer of this question is that the disease was not constitutional, rather it is attributable to Army Service. The plaintiff was found fit at the time of his admission in the Army. On account

> of arduous duties which are supposed to be performed by the Jawans while in the Army service. The plaintiff was found fit at the time of his admission in the Army. On account of arduous duties which are supposed to be performed by the Jawans while in the Army service, whether in the plain or on the mountains, these types of diseases invariably occur. The disease as alleged was occurred as per the record of the medical board on 26.12.1970. Meaning, thereby prior to this date, he was fit. In those days, the disease occurred to him after completion of six years while in service in J & K. It is nowhere the case of the defendants that the plaintiff was suffering any disease at the time of enrollment because it was first noticed on 10.10.1970 in the field then it cannot be said that the disease namely ANXIETY STATE was a constitutional disease. ...."

After going through the aforementioned observations I am of the opinion that since the plaintiff was fully fit when he joined the Army and thereafter suffered a state of Anxiety, the same is attributable to military service. Since the disease occurred after six years of service in Jammu and Kashmir which is a sensitive sector, I am of the opinion that the same is attributable to military service and cannot be said to be a constitutional disease. I therefore agree with the view taken by the learned lower Appellate Court that the disease occurred on account of arduous nature of duties performed in the Army.

Learned counsel for the appellants then argued that in fact the suit should have been dismissed on the ground of jurisdiction. She stated that according to her the plaintiff had retired from Jammu and Kashmir and therefore the Courts in Narnaul (Haryana) would have no jurisdiction. She states that merely because the plaintiff was a resident of the said area would not clothe the Court with jurisdiction. However, on being repeatedly asked whether these facts were pleaded in the written statement, she could not draw my attention to any portion of

the reply where these facts were pleaded. Having gone through the judgments, I also find that no such plea as is now sought to be raised has been raised before the Courts below. Moreover, no factual basis from which the plea can emanate can be found in the judgments. Therefore I would not permit the counsel for the appellants to raise such a plea for the first time in this regular second appeal.

Learned counsel for the appellants then argued that the suit should be dismissed on the ground of limitation. However, a reading of the judgments of the Courts below would show that a finding has been recorded that non grant of disability pension constitutes a continuous wrong. Even otherwise a reading of the judgment of the lower Appellate Court would show that there is no direction to pay any arrears of pension. Direction has only been issued to pay the pension within three months from the date of receipt of copy of that order. In this view of the matter, I do not find any merit in this contention as well.

For the reasons aforementioned, I find no merit in this regular second appeal and the same is dismissed.

(P.S.PATWALIA)
JUDGE

September 7, 2006.

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